

CITY OF HAYWARD AGENDA REPORT

Meeting Date 12/16/04 Agenda Item 2

TO:

Planning Commission

FROM:

Erik J. Pearson, AICP, Associate Planner

SUBJECT:

Use Permit Application No. PL-2004-0581 - Martin Oviedo (Applicant); Lily

Woo (Owner): Request to Add a Full Bar to a Restaurant (Buon Appetito)

The Property is Located at 917 A Street in the Central City-Commercial (CC-C)

Zoning District

RECOMMENDATION:

Staff recommends that the Planning Commission:

- 1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15332, *In-Fill Development Projects*;
- 2. Approve the Use Permit, subject to the attached findings and conditions; and
- 3. Find that the use is necessary for the public convenience or necessity with respect to the sale of alcoholic beverages.

DISCUSSION

The applicant intends to expand Buon Appetito restaurant into the adjacent vacant retail space. This would enlarge the restaurant from 1,345 square feet with 44 seats to 2,567 square feet with 76 seats. The proposal includes the addition of a bar (with approximately 12 seats) and changing the liquor license from a 'wine and beer only' (type 41) to a 'full' liquor (type 47) license. The proposed bar is designed to be surrounded by dining tables and not segregated from the dining area. The restaurant is open from 11:30 a.m. to 9 p.m. Sunday through Thursday and to 10 p.m. Friday and Saturday. The applicant expects the restaurant to be open until 11 p.m. Sunday through Thursday and midnight on Fridays and Saturdays. To permit flexibility for the restaurant operation, and because the bar is integral to the restaurant, staff recommends allowing the bar to operate consistent with the restaurant, pursuant to State regulations. Staff is currently working on amendments to the alcoholic beverage ordinance and, in its research, staff has found that there have been no more police problems associated with restaurants that also have separate bars than with those that serve alcoholic beverages at the table only.

The City's regulations for alcohol establishments allow two on-sale liquor establishments per block face. The nearest on-sale establishments are Zorns restaurant, which has a Mission Boulevard address and Sapporo Japanese Restaurant, which has a Main Street address. These establishments are not on the same block face as Buon Appetito. The ordinance also requires that no on-sale liquor establishment may be established or maintained within 100 feet of any off-sale liquor establishment. The nearest off-sale establishment (Bottle & Book at 858 B Street) is approximately 400 away.

The proposal would not result in the addition of a new liquor license, but result only in the change in the type of license. The State Department of Alcoholic Beverage Control (ABC) has determined that there is an "over-concentration" of on-sale liquor licenses within the census tract¹. Its records indicate that there are 36 active on-sale licenses (and 4 pending) where 6 should be allowed by its standards. Approval of this use permit would result in no change to these numbers. The number of on-sale licenses is due in part to the large number of restaurants in the Downtown. The Downtown is the part of the City where eating establishments with on-sale licenses is encouraged. The Downtown Design Plan recognizes that consumption of alcohol in Downtown is part of community life and the use permit affords policy makers the opportunity to review and impose conditions of approval for alcohol-related outlets to insure such uses are not a detriment. ABC uses a ratio of residents to businesses to determine the number of licenses that should be issued for each census tract. Being located Downtown, customers may be attracted from other parts of the City as well as from other cities. Furthermore, additional multiple-family residential units are planned or are under construction in Downtown. As these units are occupied, the number of allowable alcohol establishments per ABC standards will increase. Finally, the Zoning Ordinance requires at least 500 feet from off-sale establishments in other zoning districts, but requires only 100 feet from off-sale establishments within the CC-C district. The intent of the Zoning Ordinance is to have a higher concentration of on-sale licenses within the downtown area.

If the use permit is approved, and because of the "over-concentration" of licenses, ABC will ask the City to determine that the sale of alcoholic beverages is necessary for the public convenience or necessity. As the proposed restaurant expansion would help to enhance the vibrant atmosphere of downtown, staff supports this determination and has included the necessary finding in Attachment B.

Parking for the restaurant is available in the Municipal Parking Lot Number 1 to the rear and on surrounding streets. The restaurant has a main entrance from A Street and a rear service door facing the municipal parking lot. The new space would provide the restaurant additional front and rear doors. Staff recommends that one front door be removed and replaced with a window. The Downtown Commercial Design Manual encourages rear customer entrances where buildings back up to public parking areas. The applicant proposes that one rear door would be for employees and one for the public. However, the two solid doors to the rear are not inviting with uneven steps leading to the parking lot. Parked cars block access to the steps. Staff recommends, through a condition of approval, the establishment of an attractive rear entrance for the public.

¹ Census tract 4354 extends from the northerly side of Jackson Street and E Street to the south side of Grove Way between Fourth Street on the east and the *BART* tracks to the west.

Improvements would include painting the rear side of the building, replacing one of the solid doors with a glass door, new lighting, an awning over the customer door, reconstructing the concrete steps and new striping in the parking lot so that the area is open and easy to access. The applicant has expressed support for these improvements.

The sign on the front of the building is centered over the existing restaurant. When the restaurant is expanded, the sign should be relocated to properly identify the space occupied by the restaurant. As a condition of approval, staff recommends that all exterior walls be painted to coordinate and that the sign be centered over the expanded restaurant.

The restaurant's roof-top equipment is visible from both Mission Boulevard and A Street. As the Zoning Ordinance requires that an establishment obtaining a use permit comply with all design guidelines, staff recommends that a screen be constructed to obscure the view of the equipment.

ENVIRONMENTAL REVIEW:

The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Sections 15301, Existing Facilities.

PUBLIC NOTICE:

On October 18, 2004, a Referral Notice was sent to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records. Notice was also provided to the Hayward Chamber of Commerce, Hayward Downtown Business Improvement Advisory Board, Hayward Area Planning Association, Prospect Hill Neighborhood Association and CommPre. The Referral Notice provided an opportunity for persons to comment on the project. CommPre does not object to the approval of the permit provided several conditions are included. Staff has included the suggested conditions contained in the attached letter from CommPre dated October 25, 2004, with the exception of a condition regarding amplification devices as such use would not be typical.

On December 6, 2004, a Notice of Public Hearing for the Planning Commission meeting was mailed. In addition, a public notice sign was placed at the site prior to the Public Hearing to help notify neighbors and interested parties residing outside the 300-foot radius.

CONCLUSION:

The proposed project is consistent with adopted land use policies of the General Plan. The project, as conditioned, also meets all applicable requirements of the Zoning Ordinance and other applicable ordinances. Staff recommends that the Use Permit be approved.

Prepared by:

Erik J. Pearson, AICP Associate Planner

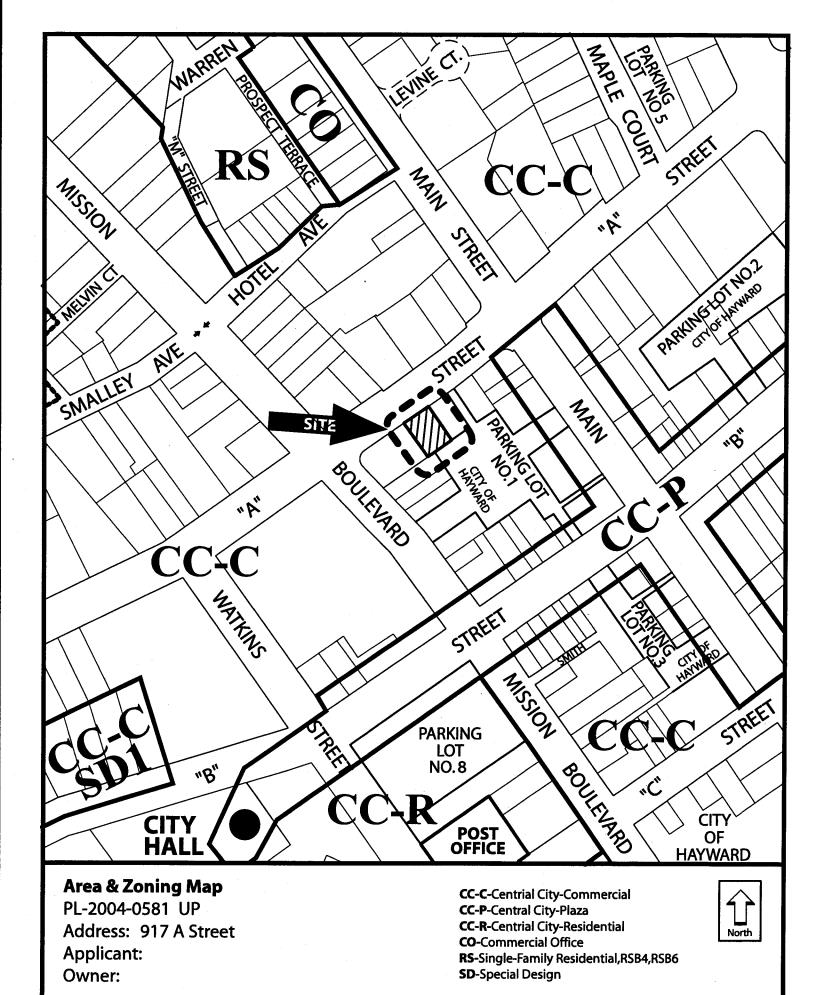
Recommended by;

Dyana Anderly, AICP Planning Manager

Attachments:

- Area & Zoning Map A.
- B.
- C.
- Findings for Approval Conditions of Approval Letters from CommPre D.

[&]quot;Exhibit A" - Plans



ATTACHMENT A

FINDINGS FOR APPROVAL

USE PERMIT APPLICATION NO. PL-2004-0581 Martin Oviedo (Applicant); Lily Woo (Owner) 917 A Street

Request to Add a Full Bar to a Restaurant (Buon Appetito).

General

A. The approval of Use Permit application No. PL-2004-0581, as conditioned, will have no significant impact on the environment, cumulative or otherwise. The project reflects the City's independent judgment, and the project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to Sections 15332 of the CEQA Guidelines (*In-Fill Development Projects*).

Use Permit

- B. The proposed use, as conditioned, is desirable for the public convenience or welfare in that, with the proximity to downtown and the municipal parking lots, the proposed business expansion would help promote a lively, pedestrian-friendly atmosphere downtown.
- C. The proposed use will not impair the character and integrity of the zoning district and surrounding area in that the conditions imposed on the operation of the restaurant will ensure safe and orderly conduct.
- D. The proposed use, as conditioned, will not be detrimental to the public health, safety, or general welfare in that the use would adhere to all of the operational requirements subject to alcoholic beverage establishments so that the establishment would be a high quality addition to downtown Hayward. The proposal meets the Zoning Ordinance separation requirements for on-sale licenses.
- E. The proposed use is in harmony with applicable City policies and the intent and purpose of the zoning district involved. The Retail and Office Commercial General Plan designation and the Central City-Commercial zoning district both support restaurants and entertainment venues.

Additional Findings for Alcoholic Beverage Establishments

F. The proposed use will not result in an undue concentration in the area of establishments dispensing alcoholic beverages in that there are no other on-sale establishments on the block face and that this is a change in an existing license, not the addition of a new alcoholic beverage outlet.

- G. The proposed use, as conditioned, will not detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from: residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses. There are no schools, churches, or parks nearby. The nearest residential uses are across A Street where apartments are located above commercial uses.
- H. There is not another alcohol beverage establishment on the block face and the proposal is well over the required 100 feet from the nearest school, library, park or off-sale establishment.
- I. Although, according to the State Department of Alcoholic Beverage Control the census tract has an over-concentration of on-sale and off-sale licenses, the proposed use is necessary for public convenience or necessity in that it would enhance a high-quality eating and drinking establishment in the Downtown.

CONDITIONS OF APPROVAL

USE PERMIT APPLICATION NO. PL-2004-0581 Martin Oviedo (Applicant); Lily Woo (Owner) 917 A Street

Request to Add a Full Bar to a Restaurant (Buon Appetito).

General:

- 1. Application No. PL-2004-0581 is approved subject to the conditions listed below. This permit becomes void one year after the effective date of approval, unless prior to that time a building permit has been issued, or a time extension of this application is approved. A request for a one-year extension, approval of which is not guaranteed, must be submitted to the Planning Division 15 days prior to the above date.
- 2. If a building permit is issued for construction of improvements authorized by the use permit approval, said approval shall be void two years after issuance of the building permit, or three years after approval of the application, whichever is later, unless the construction authorized by the building permit has been substantially completed or substantial sums have been expended in reliance upon the use permit approval.
- 3. The permittee shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
- 4. Any proposal for alterations to the proposed floor plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
- 5. Prior to final inspection/occupancy, all improvements and conditions of approval shall be completed to the satisfaction of the Planning Director.
- 6. All improvements indicated on Exhibit "A", are hereby approved and must be installed prior to authorization for final building occupancy of the new area.
- 7. Prior to application for a Building Permit, the following changes shall be made to the plans:
 - a) A copy of these conditions of approval shall be included on a full-sized sheet(s) in the plan set.
 - b) Plans shall include improvements necessary to create an attractive rear entrance. These improvements shall include appropriate signage (including the business address), rerouting of exterior wires, an awning over the door, a glass door, lighting, new steps and striping of the parking lot to create a pedestrian path to the steps.
 - c) A structure shall be designed to screen the existing roof-top equipment from views from Mission Boulevard, A Street and the municipal parking lot to the rear.
 - d) Details showing painting of the building (including color chips).
 - e) The new locations of front (centered over the expanded restaurant) and rear signs.

- f) Details of a solid fence enclosure to screen the garbage and recycling containers.
- 8. All signs shall comply with the Sign Ordinance regulations for the Central City-Commercial Zone District. Prior to installation of any signs, sign plans and a sign permit application shall be submitted for approval by the Planning Director.
- 9. A copy of the conditions of approval for the conditional use permit must be kept on the premises of the establishment and posted in a place where it may readily be viewed by the general public.
 - 10. The establishment shall operate only as a License Type 47 per the state Department of Alcoholic Beverage Control regulations.
 - 11. The permittee and all employees engaged in the dispensing of alcoholic beverages shall attend the Department of Alcoholic Beverage Control's LEAD Training within six months of approval of this permit. Any employee hired after this permit is approved shall attend such Training within six months of his/her date of hire. Employees must complete this course every two years. The applicant may contact the Hayward Police Department at 510-293-7272 for information regarding class scheduling.
 - 12. The sale of alcoholic beverages for consumption OFF the premises is strictly prohibited.
 - 13. The sales of alcoholic beverages shall not exceed 50 percent of the total sales of the restaurant/bar food sales.
 - 14. No alcohol advertisements are permitted on the exterior (including windows) of the building (neon signs included).
 - 15. No "happy hour" type of reduced price alcoholic beverage promotion is permitted.
 - 16. Consumption of alcoholic beverages shall not be permitted on any property adjacent to the licensed premises which is also under the control of the owner of the liquor establishment.
 - 17. The licensee(s) shall be responsible for removing graffiti from the premises under the control of the licensee(s) within 72 hours of application.
 - 18. The licensee(s) shall be responsible for maintaining the area adjacent to the premises, over which they have control, free of litter.
 - 19. The establishment shall discourage patrons and visitors from loitering in public rights-of-way, parking areas, and in front of adjacent properties.
- 20. The establishment shall maintain trash and garbage storage areas that are enclosed by a solid fence or wall and screened from the view of abutting properties or the public right-of-way. No materials of any kind (other than trash and recycling containers) may be stored outside the building.
- 21. The exterior of the premises, including adjacent public sidewalks and all parking lots under control of licensee(s), shall be illuminated during all hours of darkness during, which the premises are open for business in a manner so persons standing in those areas are identifiable by law enforcement personnel.
- 22. There shall be no covering of the interior or exterior of the windows of the business. If the glass has tinting to decrease sunlight, it must be so light that anyone can see clearly

- into the business during daylight or darkness. Any signs shall not occupy more than 25 percent of the total window area.
- 23. The premises shall be kept in a clean, well maintained condition. Paint and windows shall be clean and cracked or broken glass shall be replaced promptly. Public and private sidewalks shall be free of litter (including chewing gum). The management shall endeavor to see that no trash or litter originating from the establishment is deposited on neighboring properties or rights of way.
- 24. No additional mechanical equipment, or solar collectors, may be placed on the roof unless it is adequately screened from view by the proposed roof structure. Prior to issuance of a building or mechanical permit, documentation shall be provided that the roof-mounted mechanical equipment is adequately screened.
- 25. All television or satellite reception antennas shall be completely screened from view by the roof structure.

Landscaping:

- 26. Remove volunteer tree(s) from planter directly behind the building. Plant the planter with a tree, shrubs and groundcover.
- 27. Add groundcover such as Gazania or Fragaria to the planter on the west end of the parking lot.
- 28. Landscaping shall be maintained in a healthy, weed-free condition at all times with replacement plants provided where necessary.

Building:

29. Two exits are required. Plans shall indicate 3'-0" x 6'-8" sized openings at the front and rear with a clear exit path to the rear exit – not through a storage or kitchen area.

Engineering:

30. Any broken sidewalk along the property frontage that creates a tripping hazard shall be removed and replaced.

Fire Department:

- 31. The expansion shall meet the requirements set forth in the California Building Code (CBC) and the California Fire Code (CFC) for Places of Assembly (A3 Occupancy);
- 32. Exiting shall meet the requirements set forth in the CBC, Chapter 10 and the CFC, Article 12;
- 33. Panic hardware or other acceptable means of door opening devices shall be equipped on the doors leading to the exterior;
- 34. Occupant load signage shall be installed in an approved location reflecting the new occupant load (71 Persons);
- 35. Decorative materials shall be flame treated or non-combustible and a certificate of flame treatment shall be presented to the Fire Department prior to final inspection;
- 36. All existing commercial cooking equipment shall be equipped with proper fire extinguishing equipment and service dates of the equipment shall be current;

- 37. Portable fire extinguishers having the appropriate rating shall be installed within the dining and kitchen areas of the restaurant;
- 38. Due to the increase of occupant load (more than 49 persons), the business will be required to obtain an annual permit to operate (as required by the Fire Code);
- 39. A building address shall be installed on the front and rear doors of the business having a minimum 6-inch letter/number height.

Revocation:

- 40. Commission by the permittee or any employee of the permittee of a criminal offense for which 1) the permitted establishment was the location where the offense was committed or where there is a direct correlation between the permittee's establishment and the criminal offense; and 2) such criminal offense is found to be detrimental to the public health, safety, or general welfare shall be independent grounds for revocation of this permit.
- 41. Violation of any of the above conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.

COMMPRE



November 24, 2004

Erik Pearson, Associate Planner 777 B Street Hayward, CA 94541

Dear Mr. Pearson,

According to your fax, Buon Appetito is planning to upgrade their current license 41 to a 47. We still strongly recommend the Planning Commission adopt the conditions that we have suggested in our first letter.

If you have any questions, please feel free to call me at (510) 247-8225.

22652 Second Street.

Hayward, CA 94541 (510) 247-8207

(510) 247-8210 fax

A program of Horizon Services, Inc

Liz Morales

Thank you,

Prevention Specialist/Youth Community Organizer

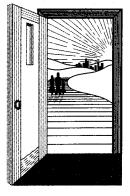
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OCT 2 6 2004

October 25, 2004

PLANNING DIVISION

COMMPRE



22652 Second Street Hayward, CA 94541 (510) 247-8207 (510) 247-8210 fax



A program of Horizon Services, Inc.

Planning Commission City of Hayward 777 B Street Hayward, CA 94541

Subject: Application No. PL-2004-0581 UP,

Dear Members of the Planning Commission:

Upon reviewing the application for Buon Appetito, located at 917 A Street for an expansion to include a full service bar, CommPre would like to provide the following input to the Planning Department.

Buon Appetito is located in census tract 4354. According to the California Alcohol Beverage Control, this census track is highly over concentrated. Currently, there are 36 active on-sale alcohol licenses, where 6 are allowed; and there are 9 active off-sale licenses where 4 are allowed. The addition of a full service bar means that the City will approve two new bars in the downtown area this year.

This number of active on-sale licenses will also be increasing as the development of the downtown area increases.

In order to mitigate the increased risks of this use, we suggest, at minimum the following conditions be placed on the CUP:

- 1. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
- 2. No alcohol advertisements are to be allowed on the exterior (including windows) of the building (neon signs included).
- 3. All employees engaged in the dispensing of alcoholic beverages shall attend Responsible Beverage Service training within six months of approval of this permit. Any employee hired after this expansion is approved shall attend Responsible Beverage Service training within six months of his/her hire date. Employees must complete this course every 2 years.
- 4. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed.

5. The use of any amplifying system or device shall not be audible outside the premises.

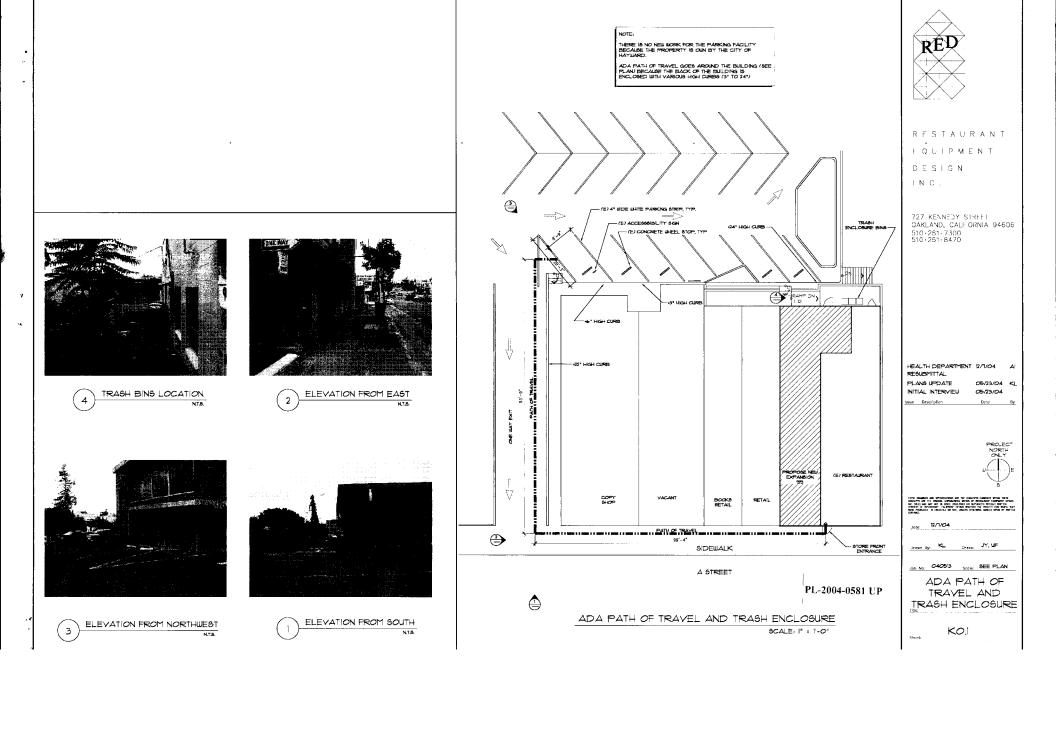
If you have any questions, please feel free to contact me at (510) 247.8225.

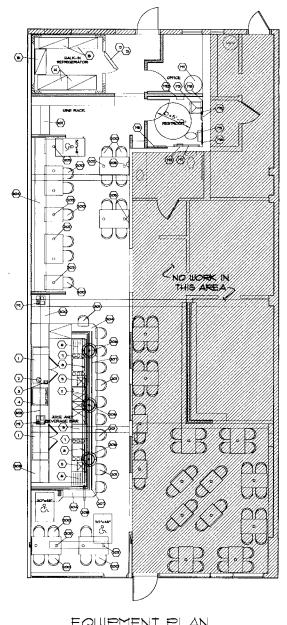
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Sincerely,

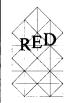
Liz Morales

Prevention Specialist/Youth Community Organizer





EQUIPMENT PLAN SCALE: \$1" = 1'-0"



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05/23/04

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